

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 199

BY WAYS AND MEANS COMMITTEE

AN ACT

RELATING TO ABANDONMENT AND VACATION OF COUNTY AND HIGHWAY DISTRICT SYSTEM  
HIGHWAYS OR PUBLIC RIGHTS-OF-WAY; AMENDING SECTION 40-203, IDAHO CODE,  
TO PROVIDE ALL ABUTTING PROPERTY OWNERS SHALL HAVE THE RIGHT OF CONTIN-  
UED ACCESS ON THE ABANDONED HIGHWAY OR PUBLIC RIGHT-OF-WAY BY VIRTUE OF  
THE MANNER AND EXTENT TO WHICH THE HIGHWAY OR PUBLIC RIGHT-OF-WAY HAS  
THEREFORE NECESSARILY AND CUSTOMARILY BEEN USED BY THOSE PROPERTY  
OWNERS AND TO MAKE A TECHNICAL CORRECTION; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 40-203, Idaho Code, be, and the same is hereby  
amended to read as follows:

40-203. ABANDONMENT AND VACATION OF COUNTY AND HIGHWAY DISTRICT SYS-  
TEM HIGHWAYS OR PUBLIC RIGHTS-OF-WAY. (1) A board of county or highway dis-  
trict commissioners, whichever shall have jurisdiction of the highway sys-  
tem, shall use the following procedure to abandon and vacate any highway or  
public right-of-way in the county or highway district system including those  
which furnish public access to state and federal public lands and waters:

(a) The commissioners may by resolution declare ~~its~~ their intention  
to abandon and vacate any highway or public right-of-way considered no  
longer to be in the public interest.

(b) Any resident, or property holder, within a county or highway dis-  
trict system including the state of Idaho, any of its subdivisions, or  
any agency of the federal government may petition the respective com-  
missioners for abandonment and vacation of any highway or public right-  
of-way within their highway system. The petitioner shall pay a reason-  
able fee as determined by the commissioners to cover the cost of the pro-  
ceedings.

(c) The commissioners shall establish a hearing date or dates on the  
proposed abandonment and vacation.

(d) The commissioners shall prepare a public notice stating their in-  
tention to hold a public hearing to consider the proposed abandonment  
and vacation of a highway or public right-of-way which shall be made  
available to the public not later than thirty (30) days prior to any  
hearing and mailed to any person requesting a copy not more than three  
(3) working days after any such request.

(e) At least thirty (30) days prior to any hearing scheduled by the com-  
missioners to consider abandonment and vacation of any highway or pub-  
lic right-of-way, the commissioners shall mail notice by United States  
mail to known owners and operators of an underground facility, as de-  
fined in section 55-2202, Idaho Code, that lies within the highway or  
public right-of-way.

1 (f) At least thirty (30) days prior to any hearing scheduled by the  
2 commissioners to consider abandonment and vacation of any highway  
3 or public right-of-way, the commissioners shall mail notice to own-  
4 ers of record of land abutting the portion of the highway or public  
5 right-of-way proposed to be abandoned and vacated at their addresses  
6 as shown on the county assessor's tax rolls and shall publish notice of  
7 the hearing at least two (2) times if in a weekly newspaper or three (3)  
8 times if in a daily newspaper, the last notice to be published at least  
9 five (5) days and not more than twenty-one (21) days before the hearing.

10 (g) At the hearing, the commissioners shall accept all information re-  
11 lating to the proceedings. Any person, including the state of Idaho or  
12 any of its subdivisions, or any agency of the federal government, may  
13 appear and give testimony for or against abandonment.

14 (h) After completion of the proceedings and consideration of all re-  
15 lated information, the commissioners shall decide whether the abandon-  
16 ment and vacation of the highway or public right-of-way is in the public  
17 interest of the highway jurisdiction affected by the abandonment or va-  
18 cation. The decision whether or not to abandon and vacate the highway or  
19 public right-of-way shall be written and shall be supported by findings  
20 of fact and conclusions of law.

21 (i) If the commissioners determine that a highway or public right-of-  
22 way parcel to be abandoned and vacated in accordance with the provisions  
23 of this section has a fair market value of twenty-five hundred dollars  
24 (\$2,500) or more, a charge may be imposed upon the acquiring entity,  
25 not in excess of the fair market value of the parcel, as a condition of  
26 the abandonment and vacation; provided, however, no such charge shall  
27 be imposed on the landowner who originally dedicated such parcel to  
28 the public for use as a highway or public right-of-way; and provided  
29 further, that if the highway or public right-of-way was originally a  
30 federal land right-of-way, said highway or public right-of-way shall  
31 revert to a federal land right-of-way.

32 (j) The commissioners shall cause any order or resolution to be  
33 recorded in the county records and the official map of the highway sys-  
34 tem to be amended as affected by the abandonment and vacation.

35 (k) From any such decision, a resident or property holder within the  
36 county or highway district system, including the state of Idaho or any  
37 of its subdivisions or any agency of the federal government, may appeal  
38 to the district court of the county in which the highway or public right-  
39 of-way is located pursuant to section 40-208, Idaho Code.

40 (2) (a) No highway or public right-of-way or parts thereof shall be  
41 abandoned and vacated so as to leave any real property adjoining the  
42 highway or public right-of-way without access to an established highway  
43 or public right-of-way.

44 (b) All abutting property owners shall have the right of continued  
45 access on the abandoned highway or public right-of-way by virtue of  
46 the manner and extent to which the highway or public right-of-way has  
47 theretofore necessarily and customarily been used by those property  
48 owners.

49 (3) In the event of abandonment and vacation, rights-of-way or ease-  
50 ments may be reserved for the continued use of existing sewer, gas, water,

1 or similar pipelines and appurtenances, or other underground facilities as  
2 defined in section 55-2202, Idaho Code, for ditches or canals and appurte-  
3 nances, and for electric, telephone and similar lines and appurtenances.

4 (4) A highway abandoned and vacated under the provisions of this sec-  
5 tion may be reclassified as a public right-of-way.

6 (5) Until abandonment is authorized by the commissioners, public use of  
7 the highway or public right-of-way may not be restricted or impeded by en-  
8 croachment or installation of any obstruction restricting public use, or by  
9 the installation of signs or notices that might tend to restrict or prohibit  
10 public use. Any person violating the provisions of this subsection shall be  
11 guilty of a misdemeanor.

12 (6) When a county or highway district desires the abandonment or vaca-  
13 tion of any highway, public street or public right-of-way which was accepted  
14 as part of a platted subdivision said abandonment or vacation shall be accom-  
15 plished pursuant to the provisions of chapter 13, title 50, Idaho Code.

16 SECTION 2. An emergency existing therefor, which emergency is hereby  
17 declared to exist, this act shall be in full force and effect on and after its  
18 passage and approval.